

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 715

THE UNITED STATES OF AMERICA, PETITIONER

vs.

**ARLENE SUMMERLIN, AS ANCILLARY ADMINIS-
TRATRIX OF THE ESTATE OF J. F. ANDREW,
DECEASED**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF FLORIDA**

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1940

CERTIORARI GRANTED MARCH 25, 1940

SUPREME COURT OF THE UNITED STATES

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vs.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

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1 IN COUNTY JUDGE'S COURT IN AND FOR POLK COUNTY, FLORIDA

In re: Estate of Joseph F. Andrew, Deceased

Ancillary Letters of Administration

Filed Aug. 11, 1937

To all to whom these presents shall come, Greetings:

Whereas, Joseph F. Andrew, deceased, late of the County of Monmouth, State of New Jersey, died intestate, having while he lived and at the time of his death an estate consisting of various assets located in the State of Florida; and

Whereas, I, the undersigned County Judge, appointed Arlene Summerlin, as ancillary administratrix of the estate of said deceased on the 2nd day of August, 1937.

Now, therefore, I, C. M. Wiggins, County Judge in and for the County aforesaid, desiring that the estate of said deceased may be well and truly administered according to law, do hereby grant unto Arlene Summerlin, as ancillary administratrix of said estate of said deceased; to ask, demand, sue for, recover and receive the same, and to pay the debts of said estate as far as the assets will extend and otherwise administer the estate according to law, as said administratrix has given bond and security and taken oath and performed all necessary acts required by law and

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by the orders of this Court to qualify as ancillary administratrix of said estate, letters of administration are therefore issued to her as an evidence of her authority under the laws of Florida and orders of this Court to act as ancillary administratrix of said estate of said deceased.

In testimony whereof, the undersigned County Judge has hereunto set his hand and affixed his seal of said office this 11th day of August 1937:

[SEAL]

C. M. WIGGINS,

*County Judge,**In County Judge's Court of Polk County.**Proof of publication of notice to creditors. Filed Sept. 6, 1937*

On this day personally appeared before me, the undersigned notary public, George L. Burr, Jr., to me well known, who, being by me first duly sworn, deposes and says that he is the publisher of The Winter Haven Herald, that said Winter Haven

Herald is a newspaper of general circulation published weekly in the City of Winter Haven, Polk County, Florida; that said newspaper has been published in accordance with the provisions and requirements of Chapter 14830, Acts of the Legislature of the State of Florida of 1931, approved May 20, 1931; and that the attached notice to creditors was published in said newspaper once each week for a period of 3 consecutive weeks, in the issues of said newspaper published on the following dates, to wit: Aug. 13, 20, 27, & Sept. 3, A. D. 1937.

GEO. L. BURR, Jr.

Sworn to and subscribed before me, this 3rd day of September, A. D. 1937.

[SEAL]

DONALD McDONALD,

Notary Public, State of Florida at Large.

My Commission Expires Dec. 17, 1937.

(Attached Notice to Creditors)

Notice to creditors

In Court of the County Judge of Polk County, Florida

In re Estate of Joseph F. Andrew, Deceased

To All Creditors and Persons Having Claims or Demands Against Said Estate:

You, and each of you, are hereby notified to file all claims and demands which you have against the estate of Joseph F. Andrew, deceased, in the office of C. M. Wiggins, County Judge, at his office in the Court House at Bartow, Florida, within eight calendar months from August 13, 1937, which is the date of the first publication of this notice. Each claim or demand must be in writing, must state the place of residence and post office address of the claimant, must be sworn to and must be filed as aforesaid, or else the same will become void.

ARLENE SUMMERLIN,

Ancillary Administratrix.

A. SUMMERLIN,

Attorney for Ancillary Administratrix.

Aug. 13, 20, 27, Sept. 3.

In County Judge's Court of Polk County in Probate

In re: Estate of J. F. Andrew, Deceased

Petition and proof of claim

Filed July 1, 1938

Comes now the United States of America by its undersigned attorneys and respectfully represents unto the Court the following:

That on or about March 19, 1935, J. F. Andrew, then living, executed and delivered to W. B. Craig his promissory note for the principal sum of Eight Hundred Thirty-nine and 86/100 (\$839.86) Dollars, which note was payable in thirty-six (36) equal consecutive monthly installments beginning one month after the date thereof; that thereafter for value and before maturity the said note was duly transferred and assigned in due course to the Federal Housing Administrator, acting for and on behalf of the United States of America; that the United States of America then and thereby became the owner and holder in due course of said promissory note; that thereafter and before the said note was paid in full the maker thereof, J. F. Andrew, departed this life and one Arlene Summerlin has by this Honorable Court been appointed Ancillary Administratrix of the estate of the said J. F. Andrew.

Your petitioner further represents unto the Court that the Estate of the said J. F. Andrew is now indebted to your petitioner on the above described promissory note in the amount of Five Hundred Twenty-five and 19/100 (\$525.19) Dollars, together with interest thereon at the rate of Six (6%) Per Cent per annum from August 21, 1936.

Your petitioner attaches hereto proof of the above described claim, properly executed, on behalf of the United States of America, and prays that the same be considered as a part of this petition.

Your petitioner further represents unto the Court that the above described claim, proof of which is attached thereto, is a debt due and owing the United States of America within the meaning of section 191 and Section 192 of Title 34, U. S. C. A.,

and that the same is, therefore, a preferred claim against the Estate of the said J. F. Andrew, deceased, and that

Section 5541 (92) Compiled General Laws of Florida, fixing the time within which claims against the estates of decedents must be filed, does not apply to claims in favor of the United States.

Your petitioner, therefore, prays that this Honorable Court enter an order allowing the filing of the attached claim of the United States against the estate of J. F. Andrew, deceased, and declare the same to be a preferred claim against said estate.

H. S. PHILLIPS,

United States Attorney.

JOSEPH E. GILLEN,

Assistant United States Attorney.

(Attached Proof of Claim)

In the Matter of J. F. Andrew, Deceased

Proof of claim of the United States of America, entitled to priority of payment under title 31, chapter 6, section 191 of the United States Code

DISTRICT OF COLUMBIA, ss:

7 In the cause aforesaid comes Perry M. Armstrong and makes oath and says that he is attorney of the Federal Housing Administrator, acting on behalf of the United States, and is authorized to make this deposition; that J. F. Andrew, deceased, is, and was at and before his/her death, justly and truly indebted to the United States of America in the principal sum of Five hundred twenty-five and 19/100 Dollars (\$525.19) with interest thereon at the rate of six per centum (6%) per annum from August 21, 1936; that the consideration for the said debt is as follows:

Under the provisions of Title I of the National Housing Act, approved June 27, 1934 (48 Stat. 1246), there was created the Federal Housing Administration as an instrumentality of the United States to carry out the provisions of said Act and all the powers of said Administration were, under the provisions of said Act, directed to be exercised by a Federal Housing Administrator with authority in said Administrator to delegate any of such powers to such agents as he might designate; that among such powers conferred on said Administrator by said Act, or amendments thereto, was the power to insure, upon such conditions as he might prescribe, banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies, and such other financial institutions, as the Administrator should find to be qualified by experience or facilities, and should approve as eligible for credit insurance, against certain losses which they might sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them subsequent to

the enactment of said Act and prior to April 1, 1937, for the purpose of financing alterations, repairs, improvements and additions upon real property and the purchase and installation of equipment and machinery on real property; that one Stewart McDonald has been duly appointed Federal Housing Administrator and is at the date hereof acting as such Administrator pursuant to such appointment; that said Administrator, pursuant to such power, on the tenth day of August 1934, did so insure Johns-Manville Credit Corporation against losses which it might sustain as the result of loans, advances of credit, or purchases of obligations representing loans and advances of credit made by it for the aforesaid purposes; that on April 11, 1935, the said Johns-Manville Credit Corporation, pursuant to the aforesaid contract of insurance issued to it, and under conditions prescribed by the Administrator in the form of regulations adopted by said Administrator, became the holder of a note of said debtor, a certified copy of which is attached hereto, representing an indebtedness in the amount of Eight hundred thirty-nine, 86/100 Dollars (\$839.86), and duly reported the same to the Administrator for insurance, whereupon the United States, in accordance with the contract of insurance aforesaid, became responsible for the payment of said indebtedness in the event that the said debtor should fail to pay the same under the provisions of regulations numbered 15 and 17 duly adopted by the Administrator and which are as follows:

Regulation No. 15

(Applicable to all loans)

Claim for reimbursement for loss on a qualified note may be made to the Administrator at any time after payment of such note has been in default for a period of 60 days. The Administrator in his discretion may at any time or from time to time call for a report from any insured institution on the delinquency status of the obligations held by such institution and reported to him for insurance.

If within the first year after default the borrower has not made payments on his obligation aggregating at least 10 percent of the balance due on the date of default, claim must be made within 30 days thereafter. If in any subsequent 6-month period the borrower has not made payments aggregating at least 5 percent of the unpaid balance as of the beginning of such period, claim must be made within 30 days thereafter.

Regulation No. 17

(Applicable to all loans)

Claims must be made on the proper form, which must be filled out completely and executed in duplicate by a duly qualified officer of the insured institution. If the Regulations have been complied with, payment of the loss incurred will be made upon audit of the claim and upon proper endorsement to the Administrator of the note upon which the loss occurred. If judgment has been taken, assignment of the judgment must be made.

That on April 19, 1936, a balance of Five hundred fourteen and $\frac{70}{100}$ Dollars (\$514.70) being then due on said indebtedness, the said debtor defaulted in the payment thereof; that on July 30, 1936, Johns-Manville Credit Corporation duly made claim upon said Administrator for the payment to it of said balance of such indebtedness in accordance with the terms of its contract of insurance with said Administrator; that on August 21, 1936, the Administrator, representing the United States, after having audited said claim, found that there was justly due said Johns-Manville Credit Corporation, New York, N. Y., the sum of Five hundred twenty-five and $\frac{19}{100}$ Dollars (\$), and paid said claim by draft on the Treasurer of the United

States, as he was obligated to do under the aforesaid contract of insurance; and as the result of such payment said debt and all security therefor was assigned to the United States, whereupon the said debtor became indebted to the United States in the amount above set forth; that no part of said debt has been paid; that there are no set-offs or counterclaims to same, except: None and that the only securities held for such debt are as follows: Note dated March 19, 1935, in amount of \$839.86, payable to and endorsed by W. B. Craig, and signed by J. F. Andrew; Proof of Claim executed against the estate of J. F. Andrew by the Johns-Manville Credit Corp. on June 29, 1936.

, said securities having been duly assigned to the United States of America.

Deponent further says that the said Administrator, pursuant to the powers conferred upon him by said National Housing Act, has delegated to deponent the power to execute in his name this proof of claim because of the fact that, owing to his many other administrative duties, it is impossible for him personally to know the facts necessary to execute this proof of claim.

Deponent further says that this claim is entitled to priority of payment under Title 31, Chapter 6, Section 191 of the United States Code as a debt owing to the United States.

THE UNITED STATES OF AMERICA,

Creditor,

By STEWART McDONALD,

Federal Housing Administrator.

[SEAL]

By PERRY M. ARMSTRONG,

Authorized Agent.

Subscribed and sworn to before me this fourth day of February

A. D. 1938.

[SEAL].

WILLIS D. WINE,

Notary Public.

My commission Expires May 15, 1940.

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No. 92087

DISTRICT OF COLUMBIA, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Willis D. Wine before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 7th day of February A. D. 1938.

g p o 16-6320

CHARLES E. STEWART, Clerk.

[SEAL]

By ANDREW A. HOENER, Assistant Clerk.

Exhibit to proof of claim

Form No. 188.

UNITED STATES (emblem) OF AMERICA.

FEDERAL HOUSING ADMINISTRATION,

Washington, January 28, 1938.

Pursuant to the provisions of section 661, chapter 17, title 28 of the United States Code (section 882 of the Re-

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vised Statutes of the United States). I hereby certify that the annexed Note—Property Owner's Credit Statement, Re: J. F. Andrew, are true copies of the original documents.
are true copies of the originals on file in this Department.

Federal Housing Administration 1934 Official Seal.

In witness whereof, I have hereunto set my hand, and cause the Seal of the Federal Housing Administration to be affixed, on the day and year first above written.

By direction of the Federal Housing Administrator.

PERRY M. ARMSTRONG.

Certification Authority.

U. S. Government Printing Office 16-5431. \$839.86. I. 10904
Date March 19, 1935. 193.

For value received, I (we) promise to pay to the order of W. B. Craig Eight Hundred Thirty-nine & 86/100—1/00 Dollars
(Name of Contractor)
in Thirty-six equal consecutive monthly instalments, beginning one month after date hereof, at 22 East 40th Street, New York, N. Y.

Upon non-payment of any instalment when due, all remaining instalments shall immediately become due and payable. And, if allowed by law, upon non-payment of this note at maturity, 15% of the amount due shall be added for attorney's fees if placed in the hands of an attorney for collection.

Signatures of

J. F. ANDREW (Husband)

(Wife)

MCP 18571

Documentary Stamps.

2630 Ave. S. N. W. Winter Haven, Florida (P. O. Box) or (R. D. No.) or (no.) (Street) (City) (State).

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(Back of Promissory Note)

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the note qualifies for insurance) to the Federal Housing Administrator, acting on behalf of the United States of America.

JOHNS-MANVILLE CREDIT CORPORATION;

By J. L. PICHIETTO, Asst. Treas.

In consideration of the purchase of the within note, I (we) hereby agree that in the event the holder hereof receives any complaint as to the quality of my (our) workmanship in executing the contract which gives rise to this note, I (we) will immediately adjust such complaint to the satisfaction of the maker

or makers hereof or, failing to do so, will repurchase the note, paying therefor the amount of any unpaid balance thereon. Without recourse otherwise.

W. B. CRAIG, Contractor.

By _____

Without recourse.

VILLA LUMBER & SUPPLY Co.,

By A. M. HESS, Pres.

14 FHE Form 2B. MCP 18571. (Short form.) Date, Feb. 16, 1935. Account No. _____.

Property Owner's Credit Statement

To Mr. W. B. CRAIG,

(Address) Winter Haven, Fla.

The following information is given for the purpose of obtaining credit under the provisions of the National Housing Act. The approximate amount of credit required by me (us) for 36 months is \$839.86. Married? Widower. Age 84. Yearly income (Yes or No or Widowed)

come (yearly commissions, yearly rents and salary, wages, etc., \$_____); other income, \$1,400.00. Total yearly income, \$1,400. Employed by, how long _____

(Name of concern) (No.) (Street)

Your position _____

(City) (State)

Bank at which checking, savings, or thrift account is kept. If none, state "None." Paterson Savings Institution, Paterson, N. J.
(Name) (Address)

Bank, finance, loan, or installment companies, or others, to whom you are making installment payments. If none, state "None."

Name	Address	Account No.	Original amount	Unpaid balance Monthly payment
None				

Description of property—Single family, x; Multiple family, 0; Apartment house, 0; Farm building, 0; Office building, 0; Warehouse, 0; Factory, 0; Store, 0.

Name in which title appears, J. F. Andrew. Purchase price, \$3,250. Year purchase, 1930. Newly built.

Location of Property, 2630 Ave. S. NW., Winter Haven, Fla.

(No.) (Street) (City) (State)

15 Amount of fire insurance, \$2,000.00. Total of all mortgages, \$ None. Details of alterations, repairs, or improvements to be made _____

	First mortgage	Second mortgage	Third mortgage
Name of mortgage holder	None	None	None
Address of mortgage holder	\$ "	\$ "	\$ "
Balance due on mortgage			

State whether or not installments and interest on the above mortgages and any other liens or encumbrances are past due. (If none, State "None." If any, give particulars.) _____

State whether or not all taxes, assessments, and fire and other insurance premiums are paid up to date Yes.

(Yes or No)

Have you applied for a loan under the terms of the National Housing Act? No.

(Yes or No)

Loan, \$ _____ granted _____
 Loan, \$ _____ refused _____

(Name of financial institution, manufacturer,

contractor, or building supply dealer applied to)

Have you any judgments, garnishments, suits, or legal proceedings against you? No. If so, give particulars _____

(Yes or No)

Business references, Robert Hance & Sons, Red Bank, N. J.
 Villa Lumber & Supply Co., Winter Haven, Fla.

I (we) authorize you, or any financial institution to which you may desire to offer my (our) note for sale, to obtain such
 16 information as you (they) may require concerning the above statement and agree that it shall remain your (their) property whether or not my (our) note is finally accepted by you. I certify that if the loan is granted to me (us) or my (our) note purchased, the entire proceeds will be used exclusively in payment for alterations, repairs, or improvements upon the property described above and that no part of such proceeds will be used for the purchase of movable or detachable equipment excluded under the regulations of the Federal Housing Ad-

ministration. I hereby affirm that each of the answers given to the foregoing questions is true and correct.

(Signature) J. F. ANDREW.

(Signature of wife of Husband) _____
 (Residing at 2630 Ave. S. N. W., Winter Haven, Fla.)

 (No.) (Street) (City) (State)

U. S. Government Printing Office: 1934. 16-2877b.

(Back of Property Owner's Credit Statement)

CONTRACTOR'S STATEMENT OF TRANSACTION

Amount to be financed	_____	\$730. 50
Discount charges (Note for 36 months)	_____	109. 36
Amount of note	_____	\$839. 86

If a down payment has been made, in arriving at the amount to be financed, contractor will fill in the following:

Down payment \$ None requested.

17 In County Judge's Court of Polk County

In Probate

In re: Estate of J. F. Andrew, deceased

Order denying petition of United States

Filed Aug. 19, 1938

This cause came on to be heard upon the petition of the United States for an order allowing and approving a claim in favor of the United States and against the estate of J. F. Andrew, deceased. Petitioner's claim in the amount of Five Hundred Twenty-five and 19/100 (\$525.19) Dollars with interest was made part of its petition and presented to this Court for filing on the 1st day of July, A. D. 1938.

The Court finds from an inspection and examination of the record and files in this cause that ancillary letters of administration with will annexed were granted Arlene Summerlin on the Estate of J. F. Andrew, deceased, by this Court on August 11, 1937, and that on the same date the said Arlene Summerlin qualified as such administratrix; that the first publication of notice

18 to the creditors of said estate was on August 13, 1937; that the claim of the United States was presented to this Court for filing on the 1st day of July, A. D. 1938.

The Court is of the opinion that the United States with respect to filing its claim is in the same position as any other creditor of the estate and enjoys no greater right or privilege and that therefore the claim of the United States is void for the reason that it was not filed in the Office of the County Judge of Polk County, Florida, within Eight (8) Months from the time of the first publication of the notice to creditors as required by Section 5541 (92) Permanent Supplement, Compiled General Laws of Florida 1927. It is, therefore, upon consideration.

Ordered, adjudged, and decreed that the petition of the United States filed in this cause on the 1st day of July, A. D. 1938, be and the same is, hereby denied, and it is further, -

Ordered, adjudged, and decreed that the claim of the United States in the amount of Five Hundred Twenty-five and 19/100 (\$525.19) Dollars with interest presented to this Court for filing on the 1st day of July, A. D. 1938, be and the same is hereby disallowed as a claim against the Estate of J. F. Andrew, deceased.

Done and ordered at Bartow, Florida, this 19th day of August, A. D. 1938.

-[SEAL]

C. M. WIGGING,
County Judge.

19 In County Judge's Court of Polk County

In Probate

In the Matter of the Estate of J. F. Andrew, Deceased

Notice of appeal and assignments of error

Filed Sept. 15, 1938

Comes now the United States of America and enters this its appeal to the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida, from that certain order entered in the above styled matter on the 19th day of August, A. D. 1938, by the Honorable Chester M. Wiggins, County Judge of Polk County, Florida, disallowing the claim of the United States against the estate of J. F. Andrew, deceased.

Appellant assigns the following errors upon which it intends to rely for a reversal of the said order here appealed from:

1. The Honorable Chester M. Wiggins, County Judge of Polk County, Florida, erred in entering the said order dated August 19, 1938, disallowing the claim of the United States of America.

2. The said Chester M. Wiggins erred in finding in and by the said order dated August 19, 1938, that the claim of the United States against the estate of J. F. Andrew, deceased, was void.

20 3. The said Chester M. Wiggins, County Judge of Polk County, Florida, erred in denying the petition of the United States filed in this cause on July 1, 1938, in and by the said order dated August 19, 1938.

JOSEPH E. GILLEN,

Assistant United States Attorney,

Attorney for Appellant.

Due and legal service of the above and foregoing notice of appeal and receipt of a copy thereof is hereby acknowledged, this 10th day of September A. D. 1938.

A. SUMMERLIN,

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd.

21 In County Judge's Court of Polk County

In Probate

In the Matter of: The Estate of J. F. Andrew, Deceased

Request for delivery of probate file

Filed Oct. 22, 1938

To the Honorable CHESTER M. WIGGINS,

County Judge of Polk County, Florida.

An appeal having been taken to the Circuit Court in and for Polk County, Florida, from that certain order entered in the above styled matter by the County Judge of Polk County, Florida, on August 19, 1938, it is respectfully requested that you as County Judge in and for Polk County, Florida, do forthwith deliver to the Clerk of the Circuit Court of Polk County, Florida, at Bartow, the entire probate file in this matter.

Respectfully,

JOSEPH E. GILLEN,

Assistant United States Attorney,

Tampa, Florida, Attorney for Appellant.

Due and legal service of the above and foregoing directions and receipt of a true copy thereof is hereby acknowledged, this 17th day of October, A. D. 1938.

A. SUMMERLIN.

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd.

22 On the 22nd day of October, A. D. 1938, the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, certified the entire probate file in the matter of the Estate of Joseph F. Andrew, deceased, including all of the instruments hereinbefore copied into this transcript of record, to the Clerk of the Circuit Court of Polk County, Florida, an appeal having been taken to the Circuit Court of Polk County, Florida, from the order entered in said cause on August 19, 1938, by the County Judge of Polk County, Florida, which certificate was filed in the office of the Clerk of the Circuit Court of Polk County, Florida, on the 24th day of October, A. D. 1938, and was and is in the words and figures following, to wit:

In County Judge's Court of Polk County

In Probate

In the Matter of the Estate of J. F. Andrew, Deceased

Certificate transmitting probate file

I, Chester M. Wiggins, County Judge in and for Polk County, Florida, do hereby certify that the attached papers and documents constitute the entire probate file appearing in my office in the above styled matter, which I have been directed to transmit to the Clerk of the Circuit Court in and for Polk County, Florida, for use in a hearing before the Circuit Court of an appeal taken in this matter by the United States of America from that certain order entered by me as County Judge in this matter on the 19th day of August, A. D. 1938.

25 In witness whereof I have hereunto set my hand and official seal at Bartow, Florida, on this the 22nd day of October A. D. 1938.

[SEAL]

C. M. WIGGINS,

County Judge in and for Polk County, Florida.

In Circuit Court of the Tenth Judicial Circuit in and for Polk
County, Florida

No. H-24

UNITED STATES OF AMERICA, APPELLANT

vs.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE
OF J. F. ANDREW, DECEASED, APPELLEE

Order of affirmance

Filed Nov. 9, 1938

24 This cause came on to be heard upon appeal from that certain order entered on the 19th day of August A. D. 1938, by the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, denying the petition of the United States for an order allowing the filing of its claim against the estate of J. F. Andrew, deceased.

The record before this Court discloses that ancillary letters of administration were granted one Arlene Summerlin on the estate of J. F. Andrew, by the County Judge of Polk County, Florida, on August 11, 1937, and on that date the said Arlene Summerlin qualified as such administratrix; that the first publication of notice to the creditors of said estate was on August 13, 1937, and that the claim of the United States against the estate of J. F. Andrew, deceased, was presented to the County Judge of Polk County, Florida, for filing on the First day of July A. D. 1938.

The Court having heard argument of counsel for the respective parties, it is, upon consideration

Ordered, adjudged, and decreed that the United States, with respect to filing its claim, is in the same position as any other creditor of the estate and enjoys no greater right of privilege and that, therefore, the claim of the United States is void for the reason that it was not filed in the office of the County Judge of Polk County, Florida, within eight months from the time of the first publication of the notice to creditors as required by Section 5541 (92), Permanent Supplement, Compiled General Laws of Florida, 1927. It is further

Ordered, adjudged, and decreed that the said order entered in this cause by the Honorable C. M. Wiggins, County
25 Judge in and for Polk County, Florida, on the 19th day of

August A. D. 1938 denying the petition of the United States, be, and the same is hereby, in all respects affirmed.

*Done and ordered at Bartow, Florida, this 8th day of November A. D. 1938.

W. J. BARKER,
Circuit Judge.

* * * * *

In Circuit Court of Polk County

[Title omitted.]

Entry of appeal

Filed Nov. 30, 1938

26 Comes now the United States of America, Appellant, by its undersigned attorneys, and enters this its appeal to the Supreme Court of Florida, and hereby gives notice thereof, from that certain order entered by the Honorable W. J. Barker, Circuit Judge of the Circuit Court in and for Polk County, Florida, on the 8th day of November A. D. 1938, and filed in the Office of the Clerk of the Circuit Court of Polk County, Florida, and recorded in Minute Book M at Page 542, which said appeal is hereby made returnable before said Supreme Court of the State of Florida at Tallahassee, Florida, on the 11th day of January A. D. 1939.

Dated this 30th day of November A. D. 1938.

H. S. PHILLIPS,
United States Attorney,
JOSEPH E. GILLEN,

Assistant United States Attorney,
Attorneys for Appellant.

[File endorsement omitted.]

27

In Circuit Court of Polk County

[Title omitted.]

Assignment of errors

Filed Nov. 30, 1938

The United States of America, Appellant, by its undersigned Attorneys, having entered an appeal to the Supreme Court of the State of Florida from that certain order entered by the Honorable W. J. Barker, Judge of the Circuit Court in and for Polk

County, Florida, on the 8th day of November, A. D. 1938, and filed in the office of the Clerk of the Circuit Court of Polk County, Florida, and recorded in Minute Book M at Page 542, hereby assigns the following errors upon which it intends to rely for a reversal of the said order appealed from:

1. The Circuit Court erred in making and entering under date of November 8, 1938, its order affirming the order and judgment of the County Judge's Court in and for Polk County, Florida;

28 2. The Circuit Court erred in finding in and by its order under date of November 8, 1938, that the claim of the United States against the estate of Joseph F. Andrew, deceased, is void for the reason that it was not filed within the time prescribed by Section 5541 (92), Permanent Supplement, Compiled General Laws of Florida, 1927.

Wherefore, appellant prays a reversal of the said order which has been appealed from.

H. S. PHILLIPS,

United States Attorney,

JOSEPH E. GILLEN,

Assistant United States Attorney,

Attorneys for Appellant.

Due and legal service of a true and correct copy of the above and foregoing Assignment of Errors is hereby acknowledged this 30 day of November A. D. 1938.

A. SUMMERLIN,

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, dec'd.

29 In Circuit Court of Polk County

[Title omitted.]

Application for transcript of record

Filed Nov. 30, 1938

Comes now the United States of America, Appellant, by its undersigned attorneys, and applies to the Honorable D. H. Sloan, Jr., Clerk of the Circuit Court in and for Polk County, Florida, for a certified transcript of the record in this cause to be used in the Supreme Court of the State of Florida upon the appeal sued out herein from the Circuit Court of the State of Florida in and for Polk County, to the said Supreme Court of Florida,

and the said Clerk of said Circuit Court is hereby requested and directed to commence the making up of the said certified transcript of the record herein on the 16th day of December A. D. 1938.

This the 30th day of November A. D. 1938.

H. S. PHILLIPS,

United States Attorney,

JOSEPH E. GILLEN,

Assistant United States Attorney,

Attorneys for Appellant.

30 Due and legal service of a true and correct copy of the above and foregoing application for transcript of record is hereby acknowledged this 30th day of November A. D. 1938.

A. SUMMERLIN,

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Admrx. of Estate of J. F. Andrew, dec'd.

* * * * *

In Circuit Court of Polk County

[Title omitted.]

Stipulation as to transcript of record

Filed Nov. 30, 1938

It is hereby stipulated and agreed by and between Joseph E. Gillen, Assistant United States Attorney, Attorney for Appellant, United States of America, and A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of Joseph F. Andrew, deceased, Appellee, that the Clerk shall copy

into and make a part of the transcript of record in this cause for use in the Supreme Court of Florida upon the appeal heretofore entered, the following described papers and shall not recite or copy into said transcript of record any other papers or proceedings:

1. Ancillary Letters of Administration granted Arlene Summerlin on the Estate of Joseph F. Andrew, deceased, by the Honorable C. M. Wiggins, County Judge of Polk County, Florida, on the 11th day of August A. D. 1937.

2. Proof of publication of notice to creditors of the Estate of Joseph F. Andrew, deceased.

3. Petition of the United States of America and proof of claim filed in the office of the County Judge of Polk County, Florida, on July 1, 1938.

4. Order entered by the County Judge of Polk County, Florida, on August 19, 1938, denying the petition of the United States of America.

5. Notice of Appeal and Assignment of Errors filed in the Office of the County Judge of Polk County, Florida, on September 15, 1938, upon appeal from the said County Judge's Court of Polk County, Florida, to the Circuit Court in and for Polk County, Florida.

6. Request of Joseph E. Gillen, Assistant United States Attorney, for the County Judge of Polk County, Florida, to deliver the entire probate file in the matter of the Estate of Joseph F. Andrew, deceased, to the Clerk of the Circuit Court of Polk County, Florida, for use in the hearing on appeal, filed in the office of the County Judge of Polk County, Florida, on October 22, 1938.

7. Certificate of the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, transmitting the above described papers (listed 1, 2, 3, 4, 5, and 6), together with others to the Clerk of the Circuit Court of Polk County, Florida.

32 8. Order entered by the Honorable W. J. Barker, Circuit Judge in and for Polk County, Florida, on November 8, 1938, and recorded in Minute Book M at Page 542 of the Records of Polk County, Florida.

9. Entry of appeal filed in the office of the Clerk of the Circuit Court of Polk County, Florida, on November 30, 1938.

10. The Assignment of Errors filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

11. Application for Transcript filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

12. Stipulation of counsel filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

13. Directions to the Clerk.

Dated this 30th day of November, A. D. 1938.

H. S. PHILLIPS,

United States Attorney,

JOSEPH E. GILLEN,

Assistant United States Attorney,

Attorneys for Appellant.

A. SUMMERLIN,

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of the Estate of J. F. Andrew, deceased, Attorney for Appellee.

In the Circuit Court of Polk County.

[Title omitted.]

Directions as to transcript of record Filed Nov. 30, 1938

To the CLERK OF THE ABOVE-STYLED COURT:

In making up the transcript of record to be used upon the appeal heretofore entered in this cause to the Supreme Court of Florida you are hereby directed to copy into and make a part of said transcript the following papers and proceedings, to-wit:

1. Ancillary Letters of Administration granted Arlene Summerlin on the Estate of Joseph F. Andrew, deceased, by the Honorable C. M. Wiggins, County Judge of Polk County, Florida, on the 11th day of August, A. D. 1937.

2. Proof of publication of notice to creditors of the Estate of Joseph F. Andrew, deceased.

3. Petition of the United States of America and proof of claim filed in the office of the County Judge of Polk County, Florida, on July 1, 1938.

34 4. Order entered by the County Judge of Polk County, Florida, on August 19, 1938, discharging the petition of the United States of America.

5. Notice of Appeal and Assignment of Errors filed in the Office of the County Judge of Polk County, Florida, on September 15, 1938, upon appeal from the said County Judge's Court of Polk County, Florida, to the Circuit Court in and for Polk County, Florida.

6. Request of Joseph E. Gillen, Assistant United States Attorney, for the County Judge of Polk County, Florida, to deliver the entire probate file in the matter of the Estate of Joseph F. Andrew, deceased, to the Clerk of the Circuit Court of Polk County, Florida, for use in the hearing on appeal, filed in the Office of the County Judge of Polk County, Florida, on October 22, 1938.

7. Certificate of the Honorable C. M. Wiggins, County Judge in and for Polk County, Florida, transmitting the above described papers (listed 1, 2, 3, 4, 5, and 6), together with others to the Clerk of the Circuit Court of Polk County, Florida.

All of the above papers were transmitted to you by the County Judge of Polk County, Florida, on October 24, 1938. You are directed to copy into and make a part of the said transcript of record the following papers and proceedings, to-wit:

8. Order entered by the Honorable W. J. Barker, Circuit Judge in and for Polk County, Florida, on November 8, 1938, and recorded in Minute Book M at Page 542 of the records of Polk County, Florida.

9. Entry of appeal filed in the Office of the Clerk of the Circuit Court of Polk County, Florida, on November 30, 1938.

The Assignment of Errors filed in the Office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

11. Application for Transcript filed in the Office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

12. Stipulation of counsel filed in the office of the Clerk of the Circuit Court, Polk County, Florida, on November 30, 1938.

13. These directions.

And you will omit from said transcript of record all other papers or proceedings in said cause.

Dated this 30th day of November, A. D. 1938.

H. S. PHILLIPS,
United States Attorney,

JOSEPH E. GILLEN,
Assistant United States Attorney,
Attorneys for Appellant.

Due and legal service of a true and correct copy of the above and foregoing Directions to the Clerk of the Circuit Court of Polk County, Florida, is hereby acknowledged this 30 day of November, A. D. 1938.

A. SUMMERLIN,

A. Summerlin, Attorney for Arlene Summerlin, Ancillary Administratrix of Estate of J. F. Andrew, deceased.

[Clerk's certificates to foregoing transcript omitted in printing.]

In Supreme Court of Florida

June Term, A. D. 1939

Polk County

UNITED STATES OF AMERICA, APPELLANT

v8.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED, APPELLEE

An Appeal from the Circuit Court for Polk County, W. J. Barker, Judge

Herbert S. Phillips and Joseph E. Gillen, for Appellant; A. Summerlin, for Appellee.

Opinion

Filed November 10, 1939

TERRELL, C. J.

This cause arises from these facts: In March 1935, as provided by the National Housing Act, J. F. Andrew executed his promissory note for \$839.86 in favor of W. B. Craig, payable in thirty-six equal monthly installments. The note was transferred to Johns-Manville Credit Corporation. The maker defaulted in his payments and Johns-Manville Credit Corporation made demand on the Federal Housing Administrator for the sum of \$529.19, said amount being the balance due on the note. It was paid by draft on the Treasurer of the United States and the latter became the owner of the note. Andrew died and appellee was named ancillary administratrix of his estate in Polk County.

August 13, 1937, the ancillary administratrix gave notice to creditors to file proof of their claims against Andrew's estate within eight months, as required by law. On July 1, 1938, 40 eleven months after the notice, the United States filed proof of its claim in the County Court and petitioned the judge for an order declaring it to be superior to all other claims as a debt due the United States as provided by Sections 191 and 192, Title 31, U. S. Code Annotated. The petition was denied because the claim was not filed within eight months from the time the notice to creditors was given. This order was on appeal approved by the Circuit Court. The decree of the Circuit is here for review.

The question to be answered is whether or not claims held by the United States against the estates of decedents in this State must be filed in eight months from date of notice thereof as required by Sections 5541 (92) Compiled General Laws of 1927, the pertinent part of which is as follows:

"No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee, or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such 41 claim or demand by paying a portion thereof or interest thereon or otherwise: * * *

This is not a statute of limitations prescribing a period within which a right may be enforced but it is rather in its nature a statute of non claim for the orderly and expeditious settlement of the estates of decedents. It is in the same category as statutes providing for conveyancing and marketing negotiable instruments, and conducting other business relations. The United States and its agencies are on notice of such statutes and are bound by them to the same extent and in the same manner as other persons are bound by them. If this is not the case, there is now no such thing as orderly and expeditious administration of estates and other businesses because of the extent to which the Federal Government has become a competitor in them. *Brooks vs. Federal Land Bank of Columbia*, 106 Fla. 412, 143 So. 749; *United States vs. Barker*, 12 Wheat. 559, 25 U. S. 559, 6 L. Ed. 728; *Cook et al. vs. United States*, 91 U. S. 389, 23 L. Ed. 237.

In this holding, we have not overlooked the cases cited by appellant. They have been read but they do not apply to statutes such as we are confronted with in this case. They treat rather the application of statutes of limitations which in many instances do not apply to State or Federal governments. Neither are such governments bound by laches or estoppel but such rules are not involved in this case. When governmental entities depart from their sovereign function and compete with private citizens in business, they should be bound by the same rules.

The judgment is affirmed.

Affirmed.

BUFORD and THOMAS, J. J. Concur.

CHAPMAN, J., concurs in opinion & judgment.

Justices WHITFIELD and BROWN not participating as authorized by Section 4687 Compiled General Laws of 1927 and Rule 21-A of the Rules of this Court.

42

1st Supreme Court of Florida

Polk County

UNITED STATES OF AMERICA, APPELLANT

vs.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE
ESTATE OF J. F. ANDREW, DECEASED, APPELLEE

Judgment

November 10, 1939

This cause having heretofore been submitted to the Court upon the transcript of the record of the order herein, and briefs and

argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said judgment; it is, therefore, considered, ordered and decreed by the Court that the said judgment of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant her costs by her in this behalf expended, which costs are taxed in the sum of \$——, all of which is ordered to be certified to the Court below.

Opinion of the Court in this cause prepared by Mr. Chief Justice Terrell was this day ordered to be filed.

45

Mandate from Supreme Court

The State of Florida

To the Honorable the Judge of the Circuit Court for the Tenth Judicial Circuit of Florida, Greeting:

Whereas, Lately in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for the County of Polk, in a cause wherein United States of America, was Appellant and Arlene Summerlin, as Ancillary Administratrix of the estate of J. F. Andrew, deceased, was Appellee, the Order of said Circuit Court was rendered Nov. 9, 1938, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1939, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel: in consideration whereof, on the 10th day of November A. D. 1939, it was considered by said Supreme Court that the said Order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee to have and recover of and from the Appellant her costs by her in this behalf expended, which costs are taxed at the sum of _____ Dollars; therefore,

You are hereby commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

Witness, The Honorable Glenn Terrell, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 29th day of November, A. D. 1939.

[SEAL]

GUYTE P. McCORD,
Clerk, Supreme Court of Florida.

A true copy.

Test.

GUYTE P. McCORD,
Clerk, Supreme Court.

47 In Supreme Court of Florida

[Title omitted.]

Application for stay order

Filed Dec. 8, 1939

Comes now the appellant, United States of America, by Herbert S. Phillips, United States Attorney for the Southern District of Florida, and Joseph E. Gillen, Assistant United States Attorney for said district, and applies to the Court for the entry of an order staying any and all further proceedings in the above styled cause, and in this behalf respectfully represents unto the Court the following:

1. That this Honorable Court on November 10, 1939, rendered its opinion in the above styled cause affirming the order and judgment of the Circuit Court in and for Polk County, Florida, and holding that appellant, United States of America, with respect to filing claims in its favor against the estates of deceased persons, is bound by the provisions of Section 5541 (92), Compiled General Laws of Florida, 1927, requiring such claims to be filed in the office of the County Judge within eight (8) months from the date of the first publication of notice to creditors.

48 2. That the Solicitor General of the United States is now considering the advisability of filing a petition in the Supreme Court of the United States for a writ of certiorari for the purpose of having that court review the judgment of the Supreme Court of Florida in this cause, and that it will require a period of at least thirty (30) days for a decision to be reached and petition for writ of certiorari filed in the event the Solicitor General determines to take such action.

Wherefore, appellant respectfully moves the Court to enter an order staying the issuance of the mandate in this cause and stay-

ing any and all further proceedings herein for a period of thirty (30) days from this date, in accordance with the provisions of Section 350, Title 28, U. S. C. A.

H. S. PHILLIPS,

United States Attorney.

JOSEPH E. GILLEN,

Assistant United States Attorney.

50

In Supreme Court of Florida

[Title omitted.]

Order granting application for stay order

December 8, 1939

The United States of America, Appellant, having filed application for an order staying the issuance of the Mandate in the above entitled cause and for staying any and all further proceedings herein for a period of 30 days from this date in accordance with the provisions of Section 350, Title 28, United States Code, and it appearing that the Mandate in said cause has been transmitted to the Lower Court and the said motion having been duly considered, it is ordered that the said motion be also treated as a motion for the return of the Mandate to this Court as well as for a stay order, it is further ordered that the Lower Court be and is hereby directed to return the Mandate in said cause to this Court and said cause be and the same is hereby stayed and all further proceedings herein for a period of 30 days from this date in accordance with the provisions of Section 350, Title 28, United States Code.

A true copy.

Test.

GUYTE P. McCORD,

Clerk, Supreme Court.

52

In Supreme Court of Florida

[Title omitted.]

Præcipe for transcript of record

Filed Feb. 3, 1939

Copies now the United States of America by its undersigned attorneys and requests the Clerk of the above-styled court to

prepare and transmit to the Honorable Francis Biddle, Solicitor General of the United States, Washington, D. C., for use in the Supreme Court of the United States, one certified and eleven uncertified copies of the transcript of record filed in the Supreme Court of Florida in the above-styled cause, and also one certified copy of all papers filed and proceedings had in said cause in the Supreme Court of Florida, including the following instruments, to wit:

1. Opinion of the Supreme Court of Florida in said cause, filed November 10, 1939;

2. Mandate issued by the Supreme Court of Florida in said cause;

3. Application for stay order, filed December 8, 1939;

53 4. Order entered on December 8, 1939, recalling the Mandate which had been issued and staying all further proceedings in said cause;

5. This Praeceptum.

HERBERT S. PHILLIPS,
United States Attorney.

JOSEPH E. GILLEN,
Asst. United States Attorney.

54 [Clerk's certificate to foregoing transcript omitted in printing.]



Supreme Court of the United States

Order allowing certiorari

Filed March 25, 1940

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.